

ADVISORY OPINION 93-025

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

November 10, 1993

Hon. Spencer D. Noe
Stoll, Keenon & Park
201 East Main Street
Suite 1000
Lexington, Kentucky 40507-1380

Dear Mr. Noe:

Thank you for contacting the Registry. Also, thank you for supplementing your facts in our phone conversation. Based on the information you have provided, the facts to your question can be stated as follows:

Dennis Clark ("Clark") is the 1993 Republican Party candidate for County Judge Executive of Oldham County, Kentucky. To gain the office of Oldham County Judge Executive, Mr. Clark needed to raise funds for his campaign. Because Mr. Clark is an employee of a county merit system, the Oldham County Police Department, he or his advisors decided that he needed to obtain a declaratory judgment which clearly affirmed his right to run for political office and do everything necessary to gain office under KRS 95.017, in spite of what appeared to be prohibition against a merit system employee soliciting funds for any political activity under KRS 78.435.(1).

Kentucky Republican Party officials, asked you, as a practicing attorney (and an equity partner in a Kentucky law firm), to volunteer legal services by filing the above-referenced declaratory judgement action in the Oldham County Circuit Court.

After you obtained a favorable ruling for candidate Clark, the Oldham Circuit Court's ruling was appealed. A summer law clerk with your firm assisted you through the Circuit Court Judgement stage of the lawsuit. Since you received notice of the appeal, a non-equity partner in your firm has assisted you with the case. Neither the non-equity partner nor the summer law clerk knew that you had volunteered your services for Mr. Clark's campaign effort. Clark has paid all out-of-pocket expenses required in the above action. Also, Clark will receive no bill for the services provided.

Based on the above facts, your question can be stated as follows:

Under KRS Chapter 121, may a practicing attorney volunteer legal services for a candidate for political office in Kentucky, or would this practice constitute an in-kind contribution to the candidate's campaign?

The answer to your question is a qualified yes. In general, an attorney may volunteer services in support of a candidate for elective office in Kentucky. A basic tenant of Kentucky campaign finance law is that anyone may volunteer various services in support of a candidate for elective office. For instance, KRS 121.015(7)(a) excludes "services provided without compensation" from the definition of the term "contribution." Id. KRS 121.160(6) further develops this concept by stating that "The candidate or slate of candidates may pay a campaign treasurer a salary for his services which shall be considered a campaign expense and shall comply with the reporting provisions of KRS 121.180 and administrative regulations promulgated by the registry." Id. (Emphasis added). Many times treasurers for Kentucky candidates are attorneys or licensed certified public accounts who volunteer professional services as campaign treasurers. KRS 121.160(6) does not require that a professional be paid by a candidate or campaign committee for services rendered in support of the candidacy. Clearly a treasurer's duties are fundamental to a campaign effort. In your particular case, legal services are fundamental to Clark's candidacy, since he is an employee of the Oldham County Police Department.

Recently, the Registry considered a similar question in KREF v. Studio Arts, Inc., KREF 93-105. In that case, which considered whether or not the services in question constituted a corporate contribution, commercial artists had volunteered their services to design a logo for a political campaign in Kentucky. The commercial artists created the logo design on their own personal time. The Registry ruled that the services involved constituted volunteered professional services.

You have indicated that you are not incorporated as a professional service corporation; therefore, the corporate contribution issue is not part of your question. However, your services as an attorney would easily exceed the \$500 contribution limit set forth in KRS 121.150(6) if such services counted as a contribution. As the treasurer may volunteer in KRS 121.160(6), and the professionals were allowed to volunteer in Studio Arts, Inc., you may volunteer your services to the Clark campaign.

You did not ask the question of whether or not your non-equity partner and your summer law clerk may volunteer services to a campaign. Using the same reasoning as above, these employees would also be allowed to volunteer services to a campaign. However, you indicated that these employees performed legal services for Clark during regular work hours and knew nothing of the "volunteer" billing arrangement. Therefore, the amount spent by the equity partners as salary paid to these employees for their work on the lawsuit in question, constitutes an in-kind contribution. The amount of this in-kind contribution should be reported by Clark. Therefore, you may value the in-kind contribution by determining the hours spent by your employees on the project and multiplying that figure by the hourly amounts the firm compensates these employees. This figure should be divided by the number of equity partners in your law firm and Clark should itemize and report (or record and report) these amounts depending on whether the amounts are less than \$300 per equity partner. For example: The non-equity partner earns \$50 per hour in salary and he or she works twenty (20) hours on the project. If there are ten (10) equity partners in the firm, each partner has contributed \$100 in-kind to Clark. Clark should report these as ten (10) unitemized in-kind contributions. Note: If the separate contributions exceeded \$300 each, Clark would have to itemize these on his report. [See KRS 121.160(2)(b)]. After the 1993 general election, the threshold amount for itemized reporting will be \$100. Finally, no contribution may be made or accepted after the general election. [See KRS 121.150(16)] Therefore, in the event the litigation in question continues after the 1993 general election, your employee(s) would have to volunteer any services provided after the general election date or the Clark campaign would have to pay fair market value for such services.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please give us a call. Thank you.

Sincerely,

Timothy E. Shull
General Counsel

TES/dt